IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 1224 OF 2005

Smt. Muktabai Rajaram Girme & ors. ... Appellants

V/s

Tulshiram Maruti Girme ... Respondent

Mr. P.K. Hushing for the appellants.

Mr. Sangram Pawar holding for Mr.a.V. Anturkar for the respondent.

CORAM: P.V. KAKADE, J.

DATED: 20TH OCT., 2005

P.C.:

1. The appellants have preferred this appeal against the judgment and order passed by the Addl. District Judge, Pune, dated 19.8.2004 allowing the appeal and setting aside the judgment and order passed by the Trial Court in R.C.S. No. 168 of 1991 dated 31.7.2001.

2. I have heard the learned counsel for the appellants. Perused the record.

3. The plaintiff filed the suit for permanent

injunction in respect of the suit property Survey No.125/11 of village Saswad, Tal. Purandar, Dist. Pune. According to the plaintiff, the property was his self acquired property and the defendant has no concern therewith. Though the defendant was the real brother, there was partition between them for all the ancestral property. The plaintiff dug a well in the suit property, installed electric connection and pipeline to which defendant had no concern and invest a lot of amount. However, the defendant obstructed the possession and hence the suit. It was also submitted that the defendant had filed the suit for partition bearing Civil Suit No. 118 of 1994 against the present plaintiff and other defendants in the same Court claiming partition of the property including the suit property alongwith other property. The defendant denied the allegations and sought dismissal of the suit.

4. The learned Trial Judge adjudicated the dispute on merits and came to the conclusion that the plaintiff had proved his title and possession over the suit property as well as the obstruction by the defendant and decreed the suit.

The appeal was carried to the District Court. The

learned Ad-hoc Addl. District Judge after hearing both sides, came to the conclusion that the plaintiff failed to prove that he was exclusive owner and in possession of the suit property. It was further held that he was also not exclusive owner and in possession of the suit well, pipe line and electric motor and alleged obstruction was also held not proved and, as such, the appeal was also came to be dismissed. Hence the present appeal.

5. At the outset, it may be noted that, there is absolutely no substantial question of law involved in this case. The so-called question sought to be raised on behalf of the appellants are purely issues of fact which are seen to be adjudicated by the lower appellate Court in just and proper manner. The learned counsel for the appellants vehemently urged that there was family arrangement between the parties for which there were separate divisions of the suit property. In order to substantiate this argument, he brought to my notice a stray statement made by the defendant made in the course of cross-examination to the effect that father of the parties had divided the landed property in his life time between the brothers in order to avoid the quarrel. However, mere divisions of the property does not mean

that there were family arrangements between the parties which are said to be oral arrangement and there is no satisfactory evidence to show that the plaintiff is in exclusive possession by virtue of title to the property.

6. Under the circumstances, I have no hesitation to hold that the learned lower appellate Court has properly appreciated the evidence on record while coming to the conclusion that the plaintiff has not proved the case. I do not wish to interfere with the findings recorded by the lower appellate Court.

In the result, the appeal stands dismissed with no order as to costs.

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